

Initiative Measure No. 1244

filed January 7, 2013

STOP GOVERNMENT FRAUD INITIATIVE

AN ACT Relating to the creation of the office of state inspector general; amending RCW 49.60.210 and 82.08.020; adding a new section to chapter 82.12 RCW; and creating new sections.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

INTENT

NEW SECTION. **Sec. 1.** It is essential that state and local governments establish credibility with the taxpayers by allowing an independent investigator to investigate instances of fraud and malfeasance by state and local governments to ensure accountability and guarantee that tax dollars are being spent properly. Is there fraud in state and local governments? Voters don't know because politicians have repeatedly blocked independent, comprehensive investigations of state and local governments, agencies, programs, and accounts. Unlike the federal government, Washington doesn't have an independent fraud investigator whose only allegiance is to the people of the state of Washington. Thankfully, this common sense initiative remedies this egregious failure of politicians to enact this reform. This measure creates the Office of State Inspector General within the State Auditor's Office to conduct independent, comprehensive fraud investigations of state and local governments, agencies, programs, and accounts. This act dedicates a portion of the state's existing sales and use tax (1/50th of 1%) to fund these fraud investigations. The identification and investigation of fraud in state and local governments required by this common sense initiative will save the taxpayers billions of dollars.

CREATING THE OFFICE OF STATE INSPECTOR GENERAL

NEW SECTION. **Sec. 2.** THE OFFICE OF STATE INSPECTOR GENERAL. (1) There shall be a State Inspector General of this state who shall be chosen by the State Auditor as one of its offices' department heads.

(2) The State Inspector General shall continue in office but may be replaced any time during the State Auditor's term in office.

NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Disclosable information" means public information that (a) is not exempt from disclosure under chapter 42.56 RCW; and (b) does not pertain to an ongoing investigation.

(2) "Fraud" means acts and practices of fraud in programs administered by a government entity, including criminal or administrative misconduct by staff, clients, or vendors.

(3) "Fraud unit" means a fraud or investigation unit, division, or service created within the employment security department, the department of labor and industries, and except for the medicaid fraud unit, the department of social and health services, to review state programs and activities.

(4) "Government entity" means a state agency, department, office, officer, board commission, bureau, division, institution, or institution of higher education. This includes individual state agencies and programs, as well as those programs and activities that cross agency lines. This includes local governments and each of their agencies, accounts, and programs. State government includes all elective offices in the executive branch of government.

(5) "Office" means the Office of State Inspector General.

NEW SECTION. **Sec. 4.** POWER AND DUTIES. (1) The State Inspector General shall:

(a) Conduct, supervise, and coordinate fraud investigations and provide policy direction as it relates to program integrity and fraud;

(b) Review proposed legislation and rules relating to the detection and prevention of fraud in programs reviewed by fraud units, and make recommendations for improvement;

(c) Recommend policies for, and conduct, supervise, and coordinate, relationships between fraud units and federal, state, and local governmental agencies, and nongovernmental entities, with respect to:

(i) Matters relating to the prevention and detection of fraud in programs and operations reviewed by fraud units; or

(ii) The identification and prosecution of participants in the fraud; and

(d) Provide reports to the governor, the legislature in accordance with the requirements of this act, concerning the detection and prevention of fraud, and to make recommendations for improvement of the activities.

(2) In carrying out the duties and responsibilities established in this chapter, the State Inspector General may refer investigations in which the office has found substantial evidence supporting a finding of a violation of

federal or state criminal law to the appropriate prosecuting authority for possible criminal prosecution.

NEW SECTION. **Sec. 5.** ENFORCEMENT. (1) The State Inspector General may prosecute an action in any court of competent jurisdiction to enforce any order made by him or her pursuant to any provision of this code.

(2) If the State Inspector General has cause to believe that any person has violated any penal provision of this code or of other laws relating to fraud he or she shall certify the facts of the violation to the public prosecutor of the jurisdiction in which the offense was committed.

(3) If the State Inspector General has cause to believe that any person is violating or is about to violate any provision of this code or any regulation or order of the office, he or she may:

(a) issue a cease and desist order; and/or

(b) bring an action in any court of competent jurisdiction to enjoin the person from continuing the violation or doing any action in furtherance thereof.

(4) The attorney general and the several prosecuting attorneys throughout the state shall prosecute or defend all proceedings brought pursuant to the provisions of this code when requested by the State Inspector General.

NEW SECTION. **Sec. 6.** (1) The Office of State Inspector General has the authority to apply for and execute all warrants and serve process of law issued by the courts in enforcing the provisions of this chapter.

(2) The Office of State Inspector General has the full authority to administer oaths and take testimony thereunder, to issue subpoenas requiring the attendance of witnesses before the office, together with all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation.

(3) Subpoenas issued in adjudicative proceedings are governed by RCW 34.05.588(1).

(4) Subpoenas issued in the conduct of investigations required or authorized by other statutory provisions or necessary in the enforcement of other statutory provisions are governed by RCW 34.05.588(2).

NEW SECTION. **Sec. 7.** (1) The Office of State Inspector General must submit a report summarizing the activities of the office to the appropriate committees of the senate and house of representatives and the public by November 30, 2013, by November 30, 2014, and by November of every year

thereafter. The report shall contain only disclosable information, including:

(a) A description of significant fraud, and of vulnerabilities or deficiencies relating to the prevention and detection of fraud, discovered as a result of investigations completed during the reporting period;

(b) A description of corrective action taken by government entities regarding fraud discovered as a result of investigations conducted by the office;

(c) Recommendations for improving the activities of the office with respect to the vulnerabilities or deficiencies identified under (a) of this subsection;

(d) An identification of each significant recommendation described in the previous reports on which corrective action has or has not been completed; and

(e) A summary of matters referred to prosecution authorities during the reporting period and the charges filed and convictions entered during the reporting period that have resulted from referrals by the office.

(2) The Office of State Inspector General must forward a draft of the report to any government entity identified in the report not less than twenty days before the date that the report is to be issued.

(3) The governor must make copies of the report available to the public upon request and at a reasonable cost at the same time the report of the Office of the State Inspector General is provided to legislative committees and the public.

(4) On or before thirty days after an investigation is completed, the Office of the State Inspector General shall hold at least one public hearing to consider the findings of the investigation and shall receive comments from the public. The government agency and its representatives and elected officials with jurisdiction in the investigated agency shall attend the hearing and be prepared to respond to questions from the office and the public.

(5) No legislative body, officeholder, or employee may impede or restrict the authority or the actions of the State Inspector General to conduct independent, comprehensive fraud investigations. To the greatest extent possible, the State Inspector General shall instruct and advise the appropriate governmental body on a step-by-step remedy to whatever fraud or fraudulent activity discovered in the investigated governmental entity. For fraud investigations of state government and its agencies, programs, and accounts, the legislature must consider the State Inspector General's reports in connection with the appropriation process. An annual report will be submitted by the joint legislative audit and review committee by July 1st of

each year detailing the status of the legislative implementation of the State Inspector General's recommendations. Justification must be provided for fraud investigation recommendations not implemented. Details of other corrective action must be provided as well. For fraud investigations of local governments and their agencies, programs, and accounts, the corresponding legislative body must consider the State Inspector General's reports in connection with its spending practices. An annual report will be submitted by the legislative body by July 1st of each year detailing the status of the legislative implementation of the State Inspector General's recommendations. Justification must be provided for recommendations not implemented. Details of other corrective action must be provided as well.

NEW SECTION. **Sec. 8.** In carrying out the provisions of this chapter, the Office of State Inspector General may:

(1) Request information or assistance as is necessary for carrying out the duties and responsibilities in this chapter from a federal, state, or local governmental agency or unit of a governmental agency, including the Washington State Patrol or other law-enforcement agencies;

(2) Issue subpoenas for witnesses, documents, information, and other data necessary in the furtherance of an investigation conducted by the office. Before issuing subpoenas to a government entity, the State Inspector General must make a reasonable request to the government entity for documents and information in possession of the government entity;

(3) Administer oaths and take testimony, when appropriate in the performance of the duties and responsibilities in this chapter, unless otherwise prohibited by law;

(4) To the extent and in the amount as may be provided by the Stop Government Fraud Account in section 11 of this act, select, appoint, and employ personnel as may be necessary to carry out the provisions of this chapter;

(5) To the extent and in the amount as may be provided by the Stop Government Fraud Account in section 11 of this act, enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and make the payments necessary to carry out the provisions of this chapter, subject to compliance with civil service laws, collective bargaining agreements, and other applicable law; and

(6) To the extent and in the amount as may be provided by the Stop Government Fraud Account in section 11 of this act, purchase or lease facilities, equipment, and supplies necessary to carry out the provisions of this chapter.

(7) To the extent and in the amount as may be provided by the Stop Government Fraud Account in section 11 of this act, contract out to forensic accountants or conduct in-house a forensic analysis of the spending and operations of any governmental entity.

NEW SECTION. **Sec. 9.** (1) In carrying out the provisions of this chapter, the Office of State Inspector General shall have prompt access to all individuals, records, electronic data, reports, audits, reviews, documents, and other materials available to a government entity that relate to operations of the office that is not otherwise prohibited from disclosure to the Office of State Inspector General.

(2) Whenever information or assistance requested under subsection (1) of this section is, in the judgment of the Office of State Inspector General, unreasonably refused or not provided, the office must report the circumstances to the governor, the legislature, and the public immediately. No legislative body, officeholder, or employee may impede or restrict the authority or the actions of the State Inspector General to conduct independent, comprehensive fraud investigations.

NEW SECTION. **Sec. 10.** (1) All powers, duties, and functions of the fraud units are transferred to the Office of State Inspector General.

(2) (a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the fraud units pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the Office of State Inspector General. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the fraud units in carrying out the powers, functions, and duties transferred shall be made available to the Office of State Inspector General. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the Office of State Inspector General.

(b) Any appropriations made to the fraud units for carrying out the powers, functions, and duties transferred shall, on the effective date of this section, be transferred and credited to the Office of State Inspector General.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the fraud units engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the Office of State Inspector General, however they may remain physically located within the department from which they were transferred. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the Office of State Inspector General to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the fraud units pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the Office of State Inspector General. All existing contracts and obligations shall remain in full force and shall be performed by the Office of State Inspector General.

(5) The transfer of the powers, duties, functions, and personnel of the fraud units shall not affect the validity of any act performed before the effective date of this section.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel resources board as provided by law.

(8) The State Inspector General shall have the authority expressly conferred upon him or her by or reasonably implied from the provisions of this code.

(9) The State Inspector General shall execute his or her duties and shall enforce the provisions of this code.

(3) The State Inspector General may:

(a) Make reasonable rules and regulations for effectuating any provision of this code, except those relating to his or her election, qualifications, or compensation. No such rules and regulations shall be effective prior to their being filed for public inspection in the commissioner's office.

(b) Conduct investigations to determine whether any person has violated any provision of this code.

(c) Conduct examinations, investigations, hearings, in addition to those

specifically provided for, useful and proper for the efficient administration of any provision of this code.

CREATING THE STOP GOVERNMENT FRAUD ACCOUNT

NEW SECTION. **Sec. 11.** The Stop Government Fraud Account is hereby created in the custody of the state treasurer. Revenue identified in RCW 82.08.020(6) and section 14 of this act shall be deposited in the account. Money in the account shall only be used to fund the operations of the Office of State Inspector General under sections 1 through 10 of this act and shall be expended by the office in accordance with this act. Only the State Inspector General or the State Inspector General's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec. 12.** Sections 1 through 11 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. **Sec. 13.** RCW 49.60.210 and 1992 c 118 s 4 are each amended to read as follows:

(1) It is an unfair practice for any employer, employment agency, labor union, or other person to discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden by this chapter, or because he or she has filed a charge, testified, or assisted in any proceeding under this chapter.

(2) It is an unfair practice for a government agency or government manager or supervisor to retaliate against a whistleblower as defined in chapter 42.40 RCW.

(3) It is an unfair practice for any employer, employment agency, labor union, government agency, government manager, or government supervisor to discharge, expel, discriminate, or otherwise retaliate against an individual assisting with an Office of State Inspector General investigation under chapter 43.-- RCW (sections 1 through 11 of this act), unless the individual has made willful disregard for the truth.

DEDICATING A PORTION OF THE STATE'S EXISTING SALES AND USE TAX (1/50TH OF 1%) TO FUND THE OFFICE OF THE STATE INSPECTOR GENERAL

Sec. 14. RCW 82.08.020 and 2011 c 171 s 120 are each amended to read as

follows:

(1) There is levied and collected a tax equal to six and five-tenths percent of the selling price on each retail sale in this state of:

(a) Tangible personal property, unless the sale is specifically excluded from the RCW 82.04.050 definition of retail sale;

(b) Digital goods, digital codes, and digital automated services, if the sale is included within the RCW 82.04.050 definition of retail sale;

(c) Services, other than digital automated services, included within the RCW 82.04.050 definition of retail sale;

(d) Extended warranties to consumers; and

(e) Anything else, the sale of which is included within the RCW 82.04.050 definition of retail sale.

(2) There is levied and collected an additional tax on each retail car rental, regardless of whether the vehicle is licensed in this state, equal to five and nine-tenths percent of the selling price. The revenue collected under this subsection must be deposited in the multimodal transportation account created in RCW 47.66.070.

(3) Beginning July 1, 2003, there is levied and collected an additional tax of three-tenths of one percent of the selling price on each retail sale of a motor vehicle in this state, other than retail car rentals taxed under subsection (2) of this section. The revenue collected under this subsection must be deposited in the multimodal transportation account created in RCW 47.66.070.

(4) For purposes of subsection (3) of this section, "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road vehicles as defined in RCW 46.04.365, nonhighway vehicles as defined in RCW 46.09.310, and snowmobiles as defined in RCW 46.04.546.

(5) Beginning on December 8, 2005, 0.16 percent of the taxes collected under subsection (1) of this section must be dedicated to funding comprehensive performance audits required under RCW 43.09.470. The revenue identified in this subsection must be deposited in the performance audits of government account created in RCW 43.09.475.

(6) Starting on the effective date of this act, 0.32 percent of the taxes collected under subsection (1) of this section must be dedicated to funding the office of state inspector general and operations required under sections 1

through 12 of this act. The revenue identified in this subsection must be deposited in the stop government fraud account created in section 11 of this act.

(7) The taxes imposed under this chapter apply to successive retail sales of the same property.

~~((7))~~ (8) The rates provided in this section apply to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

NEW SECTION. **Sec. 15.** A new section is added to chapter 82.12 RCW to read as follows:

Beginning on December 6, 2012, 0.32 percent of the taxes collected under RCW 82.12.020 based on the rate in RCW 82.08.020(1) shall be dedicated to funding the Inspector General of Washington's office and operations under sections 1 through 10 of this act. Revenue identified in this section shall be deposited in the Stop Government Fraud Account created in section 11 of this act.

MISCELLANEOUS

NEW SECTION. **Sec. 16.** The provisions of this act are to be liberally construed to effectuate the policies, purposes, and intent of this act.

NEW SECTION. **Sec. 17.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 18.** This act may be known and cited as the "Stop Government Fraud Act".

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